IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CRIMINAL MISC. PETITION NO.1316/2005
(Saroj Kanwar Vs. State)

Date of order : 09.05.2006

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. B.S. Deora, for the petitioner.
Mr. Ashok Upadhyay, Public Prosecutor.

By way of filing the present petition under Section 482 Cr.P.C., the petitioner has prayed for quashing of the order dated 26.8.2003 passed by Judicial Magistrate, First Class, Sumerpur as also the order dated 13.2.2004 passed by Additional Chief Judicial Magistrate No.2, Jodhpur. Further, it is prayed that the ornaments of the petitioner may be given to her on supardginama and necessary directions in this regard may be issued to the Judicial Magistrate, First Class, Sumerpur.

It is contended by the learned counsel for the petitioner that the facts of the case are that a complaint was filed by the petitioner's father Dalpat Singh that he along with his daughter – the present petitioner were travelling in bus and at Pali Bus

Stand, his attachi in which cloths and gold and silver ornaments were lying was stolen by unknown persons and upon the FIR filed by the petitioner's father, a case under Section 379 I.P.C. was registered and investigation was commenced. Further, it is contended that in connection with another FIR filed at Jodhpur being FIR No.561/2002 P.S. Pratap Nagar, Jodhpur, one accused Bhikampal Yadav and Hari Singh were arrested and from their possession ornaments were recovered and during the investigation in that FIR, an information was given by accused persons namely Bhikampal Yadav, Hari Singh, Pappu Singh, Vinod @ Pappu, Smt. Rambeti @ Rajan and Smt. Chanda that recovered ornaments were stolen by them from the bus in which the petitioner and her father were travelling. Thereafter, final report was given in FIR No.561/2002 Police Station, Pratap Nagar, Jodhpur and a challan was filed in the Court of Judicial Magistrate, First Class, Sumerpur in connection with CR No.163/2002 P.S. Sanderao in which the trial is pending before the said Court. It is contended by the learned counsel for the petitioner that the recovered ornaments in FIR No.561/2002 P.S. Pratap Nagar, Jodhpur were identified and the said ornaments are subject matter of FIR No.163/2002 P.S. Sanderao. The petitioner moved an application before the learned Judicial Magistrate, First Class, Sumerpur for releasing the ornaments to her on supardginama but her application was rejected by the learned Judicial

Magistrate while observing that the ornaments were recovered by the Police Station Pratap Nagar, Jodhpur in connection with FIR No.561/2002, therefore, it would not be proper to release the ornaments on supardginama to the petitioner. Thereafter, the petitioner moved an application before the Additional Chief Judicial Magistrate No.2, Jodhpur for releasing the said ornaments, which are said to be recovered in connection with FIR No.561/2002 P.S. Pratap Nagar, Jodhpur but the learned Additional Chief Judicial Magistrate No.2, Jodhpur also rejected the application moved by the petitioner while observing that the ornaments so recovered in FIR No.561/2002 P.S. Pratap Nagar are subject matter of CR No.163/2002 P.S. Sanderao, therefore, the court at Sumerpur has jurisdiction to pass appropriate orders for releasing the ornaments on supardginama. It is also contended by the learned counsel for the petitioner that the Police has filed final report in FIR No.561/2002 P.S. Pratap Nagar, Jodhpur on the ground that in respect of the same ornaments, the petitioner's father has already filed FIR at Sanderao.

I have heard learned counsel for the petitioner and gone through both the orders passed by courts below as well as the record of the case.

From the facts of the case, it is obvious that in respect of the stolen ornaments for which an

FIR being No. 163/2002 was registered at police Station Sanderao, were recovered by the Police in connection with FIR No.561/2002 P.S. Pratap Nagar, Jodhpur. Thereafter, for the reason that those recovered ornaments were subject matter of FIR No. 163/2002 P.S. Sanderao, the police gave final report in FIR No.561/2002 P.S. Pratap Nagar, Jodhpur. Thus, it is clear that the recovered ornaments are subject matter of FIR No.163/2002 P.S. Sanderao and trial is also pending before the Court of Judicial Magistrate, First Class, Sumerpur. Earlier order was passed by the Judicial Magistrate, First Class, Sumerpur under the impression that stolen ornaments were recovered at Jodhpur in FIR No. 561/2002 P.S. Pratap Nagar, Jodhpur but now in the said FIR, final report was given by the Police because the recovered ornaments were subject matter of FIR No.163/2002 P.S. Sanderao and challan has been filed at Sumerpur against the accused persons, therefore, jurisdiction is left with the Judicial Magistrate, First Class, Sumerpur where the trial of the case is going on, to decide the application of the petitioner.

In these circumstances and in the interest of justice, the petitioner is directed to move appropriate application before the Judicial Magistrate, First Class, Sumerpur for releasing the said recovered ornaments on supardginama to her. In case of filing appropriate application by the

petitioner as above, the Judicial Magistrate, First Class, Sumerpur is directed to decide the application of the petitioner on merits with regard to handing over the ornaments to her on supardginama, which is subject matter of FIR No.163/2002 P.S. Sanderao.

With the above observations and directions, the petition stands disposed of.

(GOPAL KRISHAN VYAS), J.

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